



FEDERAL ELECTION COMMISSION  
WASHINGTON DC 20463

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**SENSITIVE**

Jan Baran, Esq  
Wiley Rein & Fielding, LLP  
1776 K Street NW  
Washington, DC 20006

OCT 26 2006

RE MUR 5758  
O'Donnell & Mortimer LLP

Dear Mr Baran

Based on a complaint filed with the Federal Election Commission on May 30, 2003, and information supplied by your client, the Commission, on April 14, 2004, found that there was reason to believe your client, O'Donnell & Mortimer LLP, violated 2 U S C § 441f, and instituted an investigation of this matter

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a knowing and willful violation has occurred

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief that you may submit will be considered by the Commission before proceeding to a vote on whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

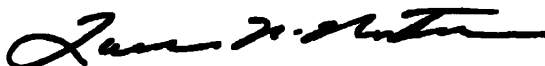
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Jan Beran, Esq  
MUR 5758  
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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a consultation agreement

Should you have any questions, please contact Audra Wassom, the attorney assigned to this matter, at (202) 694-1650

Sincerely,



Lawrence H Norton  
General Counsel

Enclosure  
Brief

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of.

O'Donnell & Mortimer LLP  
f/k/a O'Donnell & Shaeffer LLP

MUR 5758

**GENERAL COUNSEL'S BRIEF**

**I. INTRODUCTION**

In 2003, the Commission received a complaint alleging that various law firms across the country may have reimbursed employees for contributions to John Edwards's presidential campaign committee, Edwards for President ("the Edwards Committee"). Among the firms listed in the complaint was O'Donnell & Shaeffer LLP ("the Firm")<sup>1</sup>, a law firm in Los Angeles founded by Pierce O'Donnell, a prominent trial attorney who has over twenty-five years of political fundraising experience. The Firm responded to the complaint by stating that the allegations had "no merit," but it did not specifically deny that its employees were reimbursed for their contributions.

On April 14, 2004, the Commission found reason to believe that the Firm knowingly and willfully violated 2 U.S.C. § 441f. The Firm submitted a response to the Commission's factual and legal analysis denying that it reimbursed contributions to the Edwards Committee, but providing no details about its employees' contributions, many of which had been reimbursed by O'Donnell. The Firm also withheld the fact that O'Donnell and a number of other Firm employees were being investigated by Los Angeles authorities for reimbursing contributions to a

<sup>1</sup> The Firm has undergone several reorganizations and name changes since the complaint was received and was known most recently as O'Donnell & Mortimer LLP. O'Donnell & Mortimer's attorney has represented that the Firm is currently being dissolved. Pierce O'Donnell has formed a new firm, O'Donnell & Associates, PC, while most other attorneys at O'Donnell & Mortimer, including managing partner Ann Marie Mortimer, have since joined another law firm.

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1 mayoral candidate Notwithstanding the failure of the Firm to be forthcoming, an investigation  
2 has shown that O'Donnell used his personal funds and Firm resources to spearhead a scheme to  
3 reimburse contributions to the Edwards Committee As detailed below, O'Donnell reimbursed  
4 16 people for a total of \$32,000 in contributions made to the Edwards Committee

5 Throughout this investigation, O'Donnell has remained silent on his involvement with the  
6 alleged violations, asserting his Fifth Amendment privilege in response to the Commission's  
7 Subpoena to Produce Documents and Order to Answer Questions in July 2006<sup>3</sup> and in response  
8 to a deposition subpoena issued in June 2006 His Affidavit of Pierce O'Donnell dated June 16,  
9 2006 Nonetheless, O'Donnell's attorney has recently presented a new explanation for his  
10 actions previously undiagnosed mental disorders affected O'Donnell's behavior at the time of  
11 the alleged reimbursements<sup>3</sup> O'Donnell's attorney has also submitted letters from three  
12 doctors—none of whom treated O'Donnell in 2003—who opine on how various mental illnesses,  
13 such as bipolar disorder, may have affected O'Donnell at the time of the alleged violations

14 As we explain below, the undisputed facts show that O'Donnell knew that the law  
15 prohibited reimbursing contributions, yet he did so anyway The evidence also shows that  
16 O'Donnell acted as an agent of the Firm and in the ordinary course of business when he  
17 reimbursed contributions to the Edwards Committee Therefore, the Office of General Counsel  
18 intends to recommend that the Commission find probable cause to believe that O'Donnell &  
19 Mortimer LLP knowingly and willfully violated 2 U S C § 441f

<sup>3</sup> This issue had never previously been raised during the three years that this matter was pending O'Donnell's attorney explained that it was not raised earlier because questions about O'Donnell's mental health only "began to crystallize when viewed through a collective prism of persons concerned about the mens rea questions that emerged in this investigation " Letter dated July 14, 2006 at 3

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**II. SUMMARY OF THE RECORD**

**A. Pierce O'Donnell's Background**

Pierce O'Donnell, 59 years old, is a prominent litigator who has handled numerous complex cases in a variety of fields, including antitrust, entertainment, intellectual property, energy, securities, products liability, real estate, constitutional law, and finance. See [http://www.nslaw.com/whoware\\_partners01.html](http://www.nslaw.com/whoware_partners01.html), visited Sept. 5, 2006. A graduate of Georgetown and Yale, O'Donnell clerked for Supreme Court Justice Byron R. White and has been named one of the "100 Most Influential Lawyers in America" by the National Law Journal. See *id.* In 1996, O'Donnell founded O'Donnell & Shaeffer, which in 2003 had seventeen or eighteen attorneys (Latinovic Tr. at 20-21).

In addition to his legal work, O'Donnell has over twenty-five years of substantial experience in political fundraising. In 1980, O'Donnell ran for Congress, at which time he sought an advisory opinion from the Commission about whether compensation from his law firm would constitute a contribution. See Advisory Opinion 1980-115. In 1992 and 1996, O'Donnell served on the national finance committee of Bill Clinton's presidential campaigns. In addition, O'Donnell has contributed over \$50,000 to federal candidates and national party committees over the past eight years. O'Donnell has also been active in local politics, arranging fundraisers and soliciting funds for local candidates. Finally, O'Donnell has written about local elections and campaign finance reform. See <http://www.nslaw.com/whoware/POD%20Resume.pdf>, visited Sept. 5, 2006.

**B. Reimbursed Contributions to John Edwards's Presidential Campaign**

In early 2003, Pierce O'Donnell agreed to be a fundraiser for the Edwards Committee, and he sponsored a "meet and greet" breakfast event with Senator Edwards. The invitations for

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1 this event were sent by letter on Firm stationery and were signed by O'Donnell The event,  
2 which occurred on March 1, 2003 at a hotel in Beverly Hills, was organized largely by  
3 O'Donnell's longtime personal assistant at the Firm, Dolores Valdez (Latinovic Tr at 59-60)  
4 Valdez, at the request of O'Donnell, made logistical arrangements for the event and invited  
5 potential guests (Latinovic Tr at 59-60) Approximately 50 of O'Donnell's friends and  
6 colleagues attended the event, including individuals from the Firm

7 The campaign staffer for the Edwards Committee assigned to the southern California  
8 region, Molly Morris, stated in an interview with Commission staff that the event was planned  
9 entirely by O'Donnell Morris also stated that she sent O'Donnell the campaign's standard  
10 packet for fundraisers, which provided instructions on how to raise funds permissibly and  
11 specifically noted the prohibition on contributions made in the names of others According to  
12 Morris, O'Donnell appeared to be an experienced fundraiser and did not ask many questions

13 During the breakfast event, Senator Edwards indicated his campaign's need for funding,  
14 and a few attendees contributed at that time, while others contributed during the weeks that  
15 followed After the event, both O'Donnell and his assistant, Dolores Valdez, solicited  
16 individuals to contribute to the Edwards Committee, and they periodically communicated with  
17 Morris at the Edwards Committee regarding these additional contributions Overall,  
18 O'Donnell's efforts as a fundraiser led to 34 individuals contributing approximately \$50,000 to  
19 the Edwards Committee, though for unknown reasons the Edwards Committee apparently did  
20 not receive two of these contributions O'Donnell himself contributed \$2,000, and like other  
21 contributors, he signed the Edwards Committee's standard donor card, which states in part, "all  
22 contributions must be made from personal funds and cannot be reimbursed "

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1 Several employees at O'Donnell's firm contributed to the Edwards Committee. Some of  
2 those employees, primarily paralegals, stated that Valdez told them that O'Donnell would  
3 reimburse them for their contributions.<sup>4</sup> Other Firm employees, primarily attorneys, stated in  
4 sworn affidavits that they were not offered and did not receive a reimbursement for their  
5 contributions. As detailed below, our investigation has shown that O'Donnell wrote checks  
6 totaling \$31,000 to reimburse 16 individuals who contributed to the Edwards Committee. With  
7 one exception, these reimbursements all occurred within four days of the dates the contributions  
8 to the Edwards Committee were made. See Attachment 1 (flow chart of reimbursements). These  
9 funds all originated from O'Donnell's personal bank account, though the money was sometimes  
10 funneled through various individuals employed by the Firm before reaching the intended  
11 recipients. See *id.*

12 *1 Direct Reimbursements*

13 O'Donnell directly reimbursed nine individuals who contributed \$2,000 each to the  
14 Edwards Committee. Four of these individuals are related to him: his daughter, Meghan  
15 O'Donnell, his sisters, Mary Eileen O'Donnell and Helen Wahl, and his brother-in-law, Gerald  
16 Wahl. The other five individuals who were directly reimbursed were non-lawyer employees of  
17 the Firm: Elie Latnawic, Hilda Escobar, Bert Rodriguez, Elizabeth Owen, and Henry  
18 Silberman.<sup>5</sup> According to financial records, O'Donnell wrote personal checks to these  
19 individuals around the time they contributed to the Edwards Committee, most often on the same

<sup>4</sup> Valdez has asserted her Fifth Amendment privilege and has not testified in this matter.

<sup>5</sup> Silberman's contribution does not appear to have been received by the Edwards Committee. In an interview with Commission staff, Silberman stated that he gave his credit card number to Valdez, O'Donnell's assistant, for transmission to the Edwards Committee to make a contribution. The Edwards Committee, however, has no record of receiving a contribution from Silberman, and Silberman reports that his credit card was never charged.

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day as the contributions *See* Attachment 1 The checks to the employees contained the word "bonus" on the memo line

**2 Indirect Reimbursements**

In addition to the nine direct reimbursements to the individuals listed above, O'Donnell also indirectly reimbursed seven other individuals who contributed \$2,000 each to the Edwards Committee All of these indirect reimbursements were made through other employees of the Firm O'Donnell wrote personal checks to these employees in a multiple of \$2,000, and the employees would then contribute \$2,000 to the Edwards Committee themselves and also give \$2,000 to a friend or family member who also contributed \$2,000 to the Edwards Committee *See* Attachment 1

Three of these indirect reimbursements were made through Elsie Latinovic, the administrator of the Firm Latinovic testified that she was approached by Valdez to contribute to Edwards and was told that she would be reimbursed by O'Donnell (Latinovic Tr at 66-67, 77) Latinovic initially balked at contributing because she personally did not support Edwards (Latinovic Tr at 68) Latinovic conveyed that she thought it was inappropriate to ask employees to contribute, and she asked Valdez to speak with O'Donnell about her concerns (Latinovic Tr at 68) Valdez agreed to speak with O'Donnell, and Valdez also reportedly expressed unhappiness that O'Donnell asked her to solicit employees (Latinovic Tr at 67-68) O'Donnell, however, reportedly told Valdez that she needed to do what he asked, and Valdez transmitted this information to Latinovic (Latinovic Tr at 69) Latinovic then agreed to contribute, fearing that if she did not, O'Donnell would be angry and, through his position at the Firm, possibly take adverse action against her (Latinovic Tr at 110)

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1 Because Latinovic believed it was inappropriate to solicit employees for contributions,  
2 she told Valdez she would solicit her family to contribute so that other employees in the Firm  
3 would not be placed in an uncomfortable position (Latinovic Tr at 70) Valdez agreed with this  
4 proposal, and Latinovic subsequently secured three \$2,000 contributions to the Edwards  
5 Committee one from her mother, Anita Latinovic, and two from family friends, Russell and  
6 Jacqueline Folsom (Latinovic Tr at 70-75) Per her conversation with Valdez, Latinovic  
7 promised all of them that O'Donnell would reimburse them for their contributions (Latinovic  
8 Tr at 70-75) Latinovic transmitted their contribution checks to Valdez, who gave her an \$8,000  
9 check dated March 31, 2003, signed by Pierce O'Donnell That same day, Latinovic wrote three  
10 checks aggregating \$8,000 one for \$2,000 to the Edwards Committee, one for \$2,000 to her  
11 mother, and one for \$4,000 to Russell and Jacqueline Folsom

12 In addition to soliciting contributions through Latinovic, Valdez also approached  
13 paralegal Hilda Escobar and asked her to contribute, similarly telling her she would be  
14 reimbursed (Escobar Tr at 48) Escobar agreed to contribute and wrote a \$2,000 check to the  
15 Edwards Committee (Escobar Tr at 48) A few days later, Valdez again approached Escobar  
16 and asked her if she knew anyone else who would contribute, promising that O'Donnell would  
17 reimburse them as well (Escobar Tr at 51) Escobar then approached her father, Rafael  
18 Valasco, who agreed to contribute as a favor to O'Donnell (Escobar Tr at 52) Escobar  
19 transmitted her father's \$2,000 contribution check to Valdez and asked Valdez if more  
20 contributions were needed (Escobar Tr at 51) Valdez said no and later gave Escobar a \$4,000  
21 check from O'Donnell to reimburse her for her and her father's contributions Id Valdez also  
22 gave Escobar donor cards from the Edwards Committee, telling her that they needed to be  
23 completed (Escobar Tr at 50, 53)

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1 Other reimbursements also passed through multiple individuals. For example, on the  
2 same day that O'Donnell wrote the other reimbursement checks, he also wrote a \$4,000 check to  
3 Valdez. Although Valdez did not make a contribution, she passed on \$2,000 each to two other  
4 individuals who were to contribute to the Edwards Committee. First, she gave \$2,000 to her  
5 sister, Maria Saucedo, to make a contribution. Saucedo agreed to make the contribution as a  
6 favor to her sister after she was promised reimbursement<sup>6</sup> (Saucedo Tr at 15-16). Second,  
7 Valdez wrote a \$2,000 check to Bert Rodriguez, an administrative employee at the Firm, and she  
8 also gave him a separate check from Pierce O'Donnell for \$4,000. Rodriguez used the funds to  
9 contribute \$2,000 to the Edwards Committee and to give \$2,000 each to his son, Johnny  
10 Rodriguez, and Johnny's girlfriend, Christina Andujo, both of whom contributed \$2,000 to the  
11 Edwards Committee after being promised they would be reimbursed (Rodriguez Tr at 83-84).

12 On July 24, 2004, the Edwards Committee refunded over \$44,000 in contributions that it  
13 associated with O'Donnell. One of those refunds was issued to O'Donnell's sister, Mary Eileen  
14 O'Donnell, who forwarded a copy of her refund check to Pierce O'Donnell with a note stating,  
15 "What should I do with this? (copy enclosed) It's really not mine" (emphasis in original).  
16 Valdez responded, "Mary Eileen, POB will call you about this."

17 **C. Reimbursed Contributions to James Hahn's Mayoral Campaign**

18 The Edwards event was not the first time that O'Donnell used Firm resources to organize  
19 a political event and reimburse contributions. In 2000, Los Angeles mayoral candidate James  
20 Hahn attended a reception at the Firm's offices, which was organized in part by Valdez.  
21 (Latinovic Tr at 37-38). In a reimbursement scheme that mirrors the activity in this matter,  
22 O'Donnell used \$25,500 of his personal funds to reimburse Firm employees, their friends, their

<sup>6</sup> Although Saucedo filled out a donor card and provided her credit card number to make a contribution, the Edwards Committee has no record of receiving a contribution from her.

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1 relatives, and others for campaign contributions to James Hahn's mayoral campaign.<sup>7</sup> As in this  
2 matter, Dolores Valdez solicited contributions from Firm employees and arranged for their  
3 reimbursement from O'Donnell. Likewise, only administrative employees—not attorneys—  
4 were reimbursed. Those administrative employees have stated that the circumstances of the  
5 Edwards contribution reimbursements were nearly identical to that of the Hahn contribution  
6 reimbursements.

7 In December 2003, investigators from the Los Angeles City Ethics Commission visited  
8 the homes of some Firm employees to investigate allegations that the employees had been  
9 reimbursed for their contributions to James Hahn. Some of those employees, including Hilda  
10 Escobar, admitted that they had been reimbursed. Escobar subsequently informed her boss,  
11 partner Lisa Brant, and the Firm's managing partner, Ann Marie Mortimer, that she had spoken  
12 with the investigators (Escobar Tr. at 42-43, 79-80). Brant told Escobar that she was sorry that  
13 O'Donnell had put her in this position and said that she would be there if Escobar needed  
14 anything (Escobar Tr. at 79-80). Mortimer tried to reassure Escobar, telling her that everything  
15 would be okay (Escobar Tr. at 42-43). Mortimer then arranged a Firm-wide meeting to discuss  
16 the allegations (Latinovic Tr. at 97). Mortimer told the staff that although an investigation was

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<sup>7</sup> O'Donnell recently settled criminal and civil charges in Los Angeles relating to that matter. O'Donnell pleaded no contest to five counts of using a false name to make campaign contributions, and, in exchange, the prosecutor agreed to drop the remaining 21 counts. At sentencing, the court fined O'Donnell \$155,200, placed him on three years probation, and barred him from participating in any political fundraising for three years. In a settlement agreement with the Los Angeles City Ethics Commission, O'Donnell admitted to committing "serious" violations of city law by making 26 contributions in names of others. *Stipulation, Decision, and Order of the Los Angeles City Ethics Commission*, Case No. 2003-56, (Mar. 14, 2006). As part of that settlement, O'Donnell agreed to pay an administrative penalty of \$147,000. O'Donnell signed a separate settlement agreement with the California Fair Political Practices Commission, in which he again admitted the violations and agreed to pay an additional \$72,000 administrative penalty. The conduct, including many Firm employees, also signed settlement agreements with the Los Angeles City Ethics Commission admitting to violations of the law and agreeing to each pay a \$1,000 penalty, though those penalties appear to have been paid by O'Donnell or the Firm. Dolores Valdez was fined \$41,000 for aiding and abetting O'Donnell in reimbursing contributions.

1 occurring, the Firm would continue to operate and that employees should see her if they had any  
2 concerns (Latinovic Tr at 98, 109)

3 Else Latinovic, who was featured in the *Hill* article that led to the complaint being filed  
4 with the Commission, complained directly to O'Donnell about the investigations, letting him  
5 know how upset she was that he put her in such a position (Latinovic Tr at 90-91) O'Donnell  
6 told her that he was sorry this happened to her, but he promised that he would take care of  
7 everything and that the Firm would pay for her attorneys (Latinovic Tr at 91-92) Mortimer,  
8 the managing partner, also told Latinovic that the Firm would provide attorneys for her, and  
9 Latinovic stated that Mortimer was "instrumental" in trying to find the right counsel (Latinovic  
10 Tr at 108) Neither Latinovic nor any other conduit interviewed in this matter is paying his or  
11 her own legal fees, which are apparently being covered by the Firm and/or O'Donnell

12 **III. ANALYSIS**

13 The evidence has shown that O'Donnell was acting as an agent of the Firm when he  
14 reimbursed contributions to the Edwards Committee and that the Firm actively assisted him in  
15 this scheme, thereby violating 2 U S C § 441f Section 441f prohibits making a contribution in  
16 the name of another and knowingly permitting one's name to be used to effect such a  
17 contribution In addition, no person may knowingly help or assist any person in making a  
18 contribution in the name of another 2 U S C § 441f, 11 C F R § 110 4(b)(1)(iii) This  
19 prohibition also applies to any person who provides money to others to effect contributions in  
20 their names 11 C F R § 110 4(b)(2) According to financial records and sworn testimony,

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O'Donnell, through his assistant at the Firm, directly or indirectly reimbursed sixteen individuals for \$32,000 in contributions to the Edwards Committee <sup>8</sup>

Direct Reimbursements	\$18,000
Indirect Reimbursements	\$14,000
<b>TOTAL</b>	<b>\$32,000</b>

While neither the Firm nor O'Donnell has disputed that the reimbursements detailed in the prior section violated the Act's prohibition on making contributions in the name of another, O'Donnell's attorney has argued that O'Donnell, and by inference the Firm, did not knowingly and willfully violate the law, citing recent medical evaluations of O'Donnell that purport to show that his past conduct was motivated by various mental disorders. As we demonstrate below, however, the undisputed facts exceed the probable cause threshold required for a knowing and willful finding. We also show that O'Donnell acted at all times as an agent of the Firm when he reimbursed the contributions and that the Firm assisted him with this scheme. Accordingly, the Firm is also liable for the knowing and willful violations in this matter.

**A. The Violations Were Knowing and Willful**

The phrase "knowing and willful" indicates that "acts were committed with a knowledge of all the relevant facts and a recognition that the action is prohibited by law." H.R. Rpt. 94-917 at 3-4 (Mar. 17, 1976) (reprinted in Legislative History of Federal Election Campaign Act Amendments of 1976 at 803-4 (Aug. 1977)), see also *National Right to Work Comm. v FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983) (citing *AFL-CIO v FEC*, 628 F.2d 97, 98, 101 (D.C. Cir.

<sup>8</sup> Although as described above, the Edwards Committee reported receiving only \$28,000 of these contributions, O'Donnell and the Firm are still liable for making \$32,000 worth of contributions in the names of others. 2 U.S.C. § 441f. The Act's prohibition on making contributions in the name of another does not condition liability on such contributions actually being received. See *id.* The Act defines "contribution" broadly, and it includes funds given to influence a federal election, regardless of whether those funds are received by a political committee. 2 U.S.C. § 431(8)(A)(i).

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1 1980) for the proposition that "knowing and willful" means "'defiance' or 'knowing, conscious,  
2 and deliberate flaunting' [sic] of the Act"), *United States v Hopkins*, 916 F 2d 207, 214-15 (5th  
3 Cir 1990) The *Hopkins* court also held that taking steps to disguise the source of funds used in  
4 illegal activities might reasonably be explained as a "motivation to evade lawful obligations "  
5 *Hopkins*, 916 F 2d at 213-14 (citing *Ingram v United States*, 360 U S 672, 679 (1959)) (internal

6 quotations omitted) A Section 441f violation, in which the true source of the funds used to  
7 make a contribution is withheld from the recipient committee, is inherently self-concealing

8 In this case, there are several bases to conclude that O'Donnell, and by inference the  
9 Firm, knowingly and willfully violated the Act First, O'Donnell's decades of prior experience  
10 with political fundraising demonstrates his knowledge of the law From running for Congress to  
11 seeking an advisory opinion to serving on the national finance committee of a presidential  
12 campaign, O'Donnell is a sophisticated political actor Second, O'Donnell signed a donor card  
13 provided by the Edwards Committee that explicitly stated that contributions cannot be  
14 reimbursed Third, the Edwards Committee sent O'Donnell an informational packet that recited  
15 the prohibition on making contributions in the name of another Fourth, O'Donnell developed an  
16 elaborate scheme to disguise the source of his contributions by using multiple levels of conduits,  
17 which obscured the origin of the true source of contributions Finally, O'Donnell included the  
18 word "bonus" on the memo line of the reimbursement checks to Firm employees, which suggests  
19 an intent to hide the true purpose of the checks

20 O'Donnell's deliberate actions to flout the law are also evidenced by his involvement in a  
21 remarkably similar scheme to reimburse contributions to Los Angeles mayoral candidate James  
22 Hahn In both the Los Angeles matter and this one, O'Donnell wrote personal checks to  
23 contributors in the same amount as the contributors gave to the candidate, usually on the same

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1 day of the contribution. In addition, O'Donnell directed his assistant at the Firm, Dolores  
2 Valdez, to solicit contributions and offer reimbursements. Also, six of the same conduits were  
3 used in both schemes. The nearly identical circumstances surrounding the reimbursements to  
4 Hahn and to the Edwards Committee demonstrate that O'Donnell's actions in this matter were  
5 not an isolated mistake, but rather were part of a pattern and practice to circumvent contribution  
6 limits.<sup>9</sup>

7 The Firm has not disputed any of the aforementioned facts, and O'Donnell has remained  
8 silent, invoking the Fifth Amendment. O'Donnell's attorney, however, has recently argued that  
9 O'Donnell could not have formed the requisite intent to knowingly and willfully violate the law  
10 because of newly diagnosed mental disorders that supposedly affected O'Donnell at the time he  
11 reimbursed contributions to both the Hahn and Edwards campaigns. O'Donnell's attorney has  
12 also submitted recently completed letters from doctors who make various conclusions about the  
13 effect of O'Donnell's purported mental disorders.<sup>10</sup> Yet none of these letters contradict any facts  
14 that support concluding that the violation was knowing and willful. To the contrary, some of the  
15 information actually supports a knowing and willful finding. For example, one letter explicitly  
16 acknowledges that O'Donnell was "intellectually conversant with the apposite legal

<sup>9</sup> Indeed, when settling the civil charges in Los Angeles, O'Donnell admitted that his actions were "designed to and resulted in substantial excess contributions in violation of the Charter's per person contribution limits." *Stipulation, Decision, and Order of the Los Angeles City Ethics Commission*, March 14, 2006.

<sup>10</sup> For example, one letter concludes that "in approving reimbursements to his firm's employees for contributions to the Edwards campaign, Mr. O'Donnell was influenced largely by his ongoing bipolar disorder such that although he knew (intellectual awareness) what his conduct was[,] doing it was neither willful (intentionally disregarding the law) nor delinquent (specifically designed to flout the law)." Letter from Mark J. Mulla, J.D., M.D., dated July 31, 2006, at 4. Another letter discusses a "direct nexus" between O'Donnell's purported bipolar disorder and his reimbursements of contributions to the Hahn campaign. Letter from Daniel A. Martell, Ph.D., A.B.P.P., dated July 8, 2006, at 11. Nonetheless, while the doctors agree that O'Donnell's alleged mental disorders affected his conduct when he reimbursed contributions, they also conclude that these purported mental disorders had no effect on O'Donnell's ability to govern his law. "O'Donnell's high intelligence, coupled with a highly experienced team of colleagues and support staff, allowed him to compartmentalize his law practice and channel his manic symptoms in ways that have historically made him the successful litigator he is today, despite his bipolar illness." Letter from Daniel A. Martell at 11.

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1 requirements" and that he acted despite the explicit concerns raised by Valdez because he viewed  
2 the law as "irrelevant." Letter from Mark J. Mills, J.D., M.D., dated July 31, 2006, at 4. This  
3 statement further establishes that O'Donnell acted knowingly and willfully in this matter. He  
4 knew that the law prohibited reimbursing contributions, yet he chose to do so anyway.

5 In sum, an investigation has discovered substantial evidence of knowing and willful  
6 conduct by O'Donnell, a partner and agent of the Firm. In addition, given that O'Donnell has  
7 asserted his Fifth Amendment privilege in response to the Commission's subpoena, the  
8 Commission may draw an adverse inference from O'Donnell's refusal to testify in this matter.  
9 See *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976), *SEC v. Gemstar-TV Guide Int'l, Inc.*, 401  
10 F.3d 1031, 1046 (9th Cir. 2005) ("[p]arties are free to invoke the Fifth Amendment in civil cases,  
11 but the court is equally free to draw adverse inferences from their failure of proof") quoting *SEC*  
12 *v. Colello*, 139 F.3d 674, 677 (9th Cir. 1998). Therefore, based on the extensive direct evidence  
13 developed in this investigation, and in the absence of testimony from O'Donnell, there is  
14 probable cause to believe that he knowingly and willfully violated the Act in this matter.

15 **H. The Firm is Liable for the Violations**

16 Contrary to the Firm's response to the complaint, the allegations against it are not  
17 "without merit." A basic tenet of agency law is that employers can be held liable for wrongful  
18 acts committed by their employees that are within the scope of their employment. See  
19 *Restatement of Agency* 2d § 219 (1958).<sup>11</sup> Here, although the Firm's funds were not directly

<sup>11</sup> The Firm is a limited liability partnership (LLP) in California, which allows partnerships to be held liable for the acts of its agents. Under the California Uniform Partnership Act, each partner is an agent of the partnership and the acts of partners within the ordinary course of business bind the partnership. Cal. Corp. Code § 16301 (2006). The partnership is liable for a penalty incurred or other actionable conduct by a partner acting in the ordinary course of business or with the authority of the partnership. See *id.* at § 16305. See also *Redman v. Walters*, 88 Cal. App. 3d 448, 453 (1979) (stating that "the partnership is liable to the same extent as the partner" for "any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership"). This liability includes willful violations of the law as well as simple negligence. *Madden v. Cawthorne*, 30 Cal. App. 2d 124, 126 (1938).



1 used to reimburse contributions, O'Donnell, Valdez, and other Firm employees used Firm  
2 resources to further the reimbursement scheme. The Supreme Court has explicitly found that  
3 partnerships can knowingly and willfully violate the law through its agents. "It is elementary  
4 that such impersonal entities can be guilty of 'knowing' or 'willful' violations of regulatory  
5 statutes through the doctrine of *respondent superior*." *United States v. A&P Trucking Co.*, 358  
6 U.S. 121, 125 (1958). See also *Henlester Network v. Bhulala*, 51 F.3d 1390 (9th Cir. 1995)  
7 (upholding an agency's finding that a partnership knowingly and willfully violated the law  
8 through one of its agents even though that agent acted contrary to corporate policy).<sup>12</sup>

9 In this case, there are several reasons to conclude that O'Donnell was acting as an agent  
10 of the Firm in the ordinary course of business when he reimbursed contributions to the Edwards  
11 Committee. First, as a partner of the Firm, O'Donnell had authority to direct Firm employees to  
12 carry out the reimbursement scheme. Indeed, given O'Donnell's stature in the Firm, a personal  
13 request from him would be virtually indistinguishable from an official business request to the  
14 Firm staff. Second, O'Donnell repeatedly and openly used firm resources to further his political  
15 fundraising activities. For example, in the Hahn matter, O'Donnell hosted an event with the  
16 candidate at the Firm's offices, and in this matter, O'Donnell used Firm stationery to create  
17 invitations to the Edwards event, which many Firm employees attended. Finally, the Firm's  
18 actions after the allegations became public, such as arranging and paying for legal representation  
19 for its employees, also demonstrate that employees were acting in the ordinary course of

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<sup>12</sup> These cases have not conditioned liability on a showing that the partnership knew of or consented to the illegal activities. See *United States v. Hilton Hotels Corp.*, 467 F.2d 1000 (9th Cir. 1972) (finding a corporation criminally liable for violations by an agent even though the agent defied the express instructions of the corporation). Thus, while the Firm has remained silent on whether other partners besides O'Donnell knew of the reimbursements at the time they were made, a lack of knowledge would not extinguish the Firm's liability for O'Donnell's actions.

1 business—not in a personal transaction—when they agreed to O'Donnell's request to contribute  
2 to the Edwards Committee and be reimbursed

3 In a similar previous matter, the Commission found probable cause to believe that a  
4 Washington law firm violated the Act when one of its agents solicited contributions from a  
5 foreign national. See MUR 4530 (Psaltis). In that matter, the law firm's agent acted within the  
6 scope of her employment in collecting the contributions, and the law firm provided her with the  
7 instructions to perform fundraising. The Commission rejected the law firm's argument that  
8 it should be excused from liability because it refunded the contributions after it discovered the  
9 illegality.

10 Although the Commission has previously exercised its discretion in some other matters  
11 not to pursue entities whose agents reimburse contributions, it usually does so only if the entity  
12 took immediate corrective action when it learned of the illegal activity and cooperated with the  
13 Commission's investigation. See MUR 5092 (Lazaroff). In MUR 5092, which also involved a  
14 law firm partner reimbursing employees, the law firm denied any knowledge of the  
15 reimbursements, and the firm fired the partner when it learned that he reimbursed employees.  
16 After that law firm cooperated fully with the Commission's investigation and provided evidence  
17 against the partner, the Commission determined to take no action against that firm.

18 Unlike the law firm in MUR 5092, the Firm in this case has not denied that it knew of the  
19 reimbursements at the time they were made, rather, it has remained silent on this issue.  
20 Moreover, the Firm in this matter did not come forward immediately and cooperate as did the  
21 law firm in MUR 5092, nor has the Firm taken any corrective action. Before the complaint was  
22 even filed in this matter, Firm administrator Elise Latinovic spoke with Ann Marie Mortimer, the  
23 managing partner, regarding an article in the *Hill* about the suspect contributions. The Firm thus

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1 had the opportunity to self-report the violations to the Commission or take other corrective  
2 action, but it chose to remain silent. Even after the complaint was filed, the Firm did not disclose  
3 O'Donnell's conduct to the Commission. To the contrary, the Firm stated in its curt response to  
4 the complaint that the allegations had "no merit," and it withheld the fact that O'Donnell had  
5 reimbursed employees for their contributions.

6 Even after the Commission found reason to believe that the Firm violated the Act in this  
7 matter—when Los Angeles authorities were actively investigating Firm employees for their  
8 involvement in the Hahn reimbursement scheme—the Firm did not inform the Commission  
9 about any possible illegal activities by O'Donnell. To this day, the Firm has not acknowledged  
10 that O'Donnell reimbursed Firm employees for their contributions to the Edwards Committee.  
11 Although the Firm may not have a legal duty to report O'Donnell's misconduct, its failure to  
12 come forward distinguishes it from other entities for which the Commission has taken no action  
13 when one of its agents violated the Act.

14 Therefore, based on all the reasons stated, this Office is prepared to recommend that the  
15 Commission find probable cause to believe that O'Donnell & Mortimer LLP (formerly known as  
16 O'Donnell & Shaeffer LLP) knowingly and willfully violated 2 U.S.C. § 441f by making and  
17 facilitating contributions in the names of others.

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**IV. GENERAL COUNSEL'S RECOMMENDATION**


- 1 Find probable cause to believe that O'Donnell & Mortimer LLP (formerly known as O'Donnell & Shaeffer LLP) knowingly and willfully violated 2 U S C § 441f**

10/26/00  
Date

  
Lawrence H. Norton  
General Counsel

  
Rhonda J. Vosdingh  
Associate General Counsel for Enforcement

  
Mark D. Shonkwiler  
Assistant General Counsel

  
Brant S. Levine  
Attorney

  
Audra L. Wassom  
Attorney

**Attachment**

- 1 Flow Chart of Reimbursed Contributions**

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**Edwards for President**

**Attachment 1**  
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